

**Henry, *et al.* v. Brown University, *et al.***

**EXHIBIT 9**

**10/26/2022 Hearing Transcript - Excerpt**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

4 SIA HENRY, et al., } Docket No. 22 C 125  
5 Plaintiffs, }  
6 vs. }  
7 BROWN UNIVERSITY, et al., } Chicago, Illinois  
8 Defendants. } October 26, 2022  
10:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPFARANCES

13 For the Plaintiffs: ROCHE FREEDMAN LLP  
14 BY: MR. EDWARD J. NORMAND  
15 99 Park Avenue, Suite 1910  
New York, NY 10016  
(646) 970-7513

17 GILBERT LITIGATORS & COUNSELORS  
18 BY: MR. ROBERT DEWITT GILBERT  
19 11 Broadway, Suite 615  
New York, NY 10004  
(646) 448-5269

22 Court Reporter: MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR  
23 Official Court Reporter  
24 219 S. Dearborn Street, Suite 2102  
Chicago, Illinois 60604  
(312) 435-5639

1 APPEARANCES CONTINUED:  
2

3 For the Defendants:

4 Brown University:

MORGAN, LEWIS & BOCKIUS LLP  
BY: MR. JON R. ROELLKE  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 739-5754

5 Dartmouth College:

JENNER & BLOCK LLP  
BY: MS. TERRI LYNN MASCHERIN  
353 N. Clark Street  
Chicago, IL 60654  
(312) 222-9350

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   THE COURT: Okay. And I see one other person there.  
2 He has a yellow tie on.

3                   MR. ROELLKE: Thank you, your Honor. It's Jon  
4 Roellke for Brown University.

5                   THE COURT: All right. What I'm going to ask is that  
6 anybody who's on by phone, mute your phone.

7                   For those of you who are on video, if you don't use  
8 this platform a lot and you're seeing a whole bunch of empty  
9 boxes, you can make those go away. There's a thing at the top  
10 of your screen, if you run your cursor up there, that should  
11 say, Layout. If you click on that, you'll see something that  
12 says, Hide participants without video. If you turn that on,  
13 the empty boxes go away.

14                  Okay. So what's before me is the dispute that  
15 involves proposed what I'll call -- I guess FERPA is the -- is  
16 the acronym -- order. And I have a couple of questions,  
17 specific questions, that I want to ask, so I think maybe  
18 that's the place to start.

19                  Let me get to the right spot in my notes.

20                  So the -- this is a question really for defense  
21 counsel.

22                  So the plaintiffs used this term, which I acknowledge  
23 and I think they acknowledge isn't in the regs or the statute,  
24 what they refer to as a donation record, and I'm just going to  
25 take kind of their definition of that.

1 document as the plaintiffs, as the plaintiffs' counsel.

2 THE COURT: Give me a second to absorb this.

3 Okay. And is there something in the defendants'  
4 position that suggests that you wouldn't?

5 MR. GILBERT: Okay. Well --

6 MS. MASCHERIN: If I may speak to that, your Honor.  
7 What plaintiffs are proposing -- and this is in 8(c) -- is  
8 that in donation records, defendants should not be permitted  
9 to redact either the names of donors or the names of  
10 applicants or students.

11 THE COURT: Okay.

12 MS. MASCHERIN: That's --

13 THE COURT: And you're saying that if it names a  
14 student, it then qualifies as a student record.

15 MS. MASCHERIN: It --

16 MR. GILBERT: And --

17 MS. MASCHERIN: -- it may qualify as --

18 THE COURT: One person now.

19 MS. MASCHERIN: Yes, your Honor, it may qualify as a  
20 student record. And this goes back to the definition of  
21 education --

22 THE COURT: Okay. So let me get just kind of to the  
23 nub of this question.

24 So the whole case -- maybe not the whole case, but a  
25 significant part of the case is exactly this, the contention

1 that admissions are tied to donations, or at least that's a  
2 significant part of the case. And so unless there's going to  
3 be an opinion that basically says, well, the kind of thing I  
4 just said is not going to happen, that basically says the  
5 plaintiffs can't get that, therefore, the case is over, then  
6 we have to come up with a way of doing that.

7 I, perhaps stupidly, thought that's what we talked  
8 about for the first 40 minutes of this discussion, was a way  
9 of doing that, that you'd put in some sort of a code for the  
10 names of each one of those people which would allow somebody  
11 to say, okay, this is a donation record that relates to this  
12 student over here and so we can determine whether that had any  
13 effect on whether that person got admitted or not. I thought  
14 that's what we were talking about.

15 MS. MASCHERIN: May I respond to that, your Honor?

16 THE COURT: Well, I mean, you can just tell me if I'm  
17 missing something.

18 MS. MASCHERIN: I'm going to try to clarify.

19 THE COURT: I mean, I'm trying to figure out what --  
20 I'm never going to get that 45 minutes of my life back.

21 MS. MASCHERIN: Your Honor has made reference a  
22 couple of times to a notice to students. In the separate  
23 FERPA order which the parties -- to which the parties have  
24 agreed, there's no dispute about it, we have provided for  
25 exactly that type of a process.

1 I certify that the foregoing is a correct transcript from  
2 the record of proceedings in the above-entitled matter.  
3

3 Carolyn R. Cox \_\_\_\_\_ Date  
4 Official Court Reporter  
Northern District of Illinois  
5 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25